

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 23-81581-CIV-CANNON

BRUCE PETRICCA,

Plaintiff,

v.

**SAXONY CONDOMINIUM
ASSOCIATION, INC. *et al.*,**

Defendants.

**ORDER ACCEPTING MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION [ECF No. 24]**

THIS CAUSE comes before the Court upon the Magistrate Judge’s Report and Recommendation on Defendants’ Motion to Dismiss the Complaint (the “Report”) [ECF No. 24]. On February 19, 2024, Defendants filed a Motion to Dismiss the Complaint (the “Motion”) [ECF No. 18].¹ The Report recommends that the Motion be granted in part and denied in part [ECF No. 24 pp. 14–15]. Defendants filed Objections to the Report on April 29, 2024 [ECF No. 25]. Plaintiff has not filed objections or responded to Defendants’ Objections, and the time to do so has expired.²

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation

¹ As used in this Order, “Defendants” refers to those Defendants that filed the Motion to Dismiss—Saxony Condominium Association, Inc., Carmine Colella, Barbara Flanick, and Alice Zassman [ECF No. 18]. Defendant Todd Hooper did not join in the Motion and has otherwise failed to appear in this action [See ECF No. 19].

² During a status conference held on July 8, 2024, Plaintiff represented that he had no objections to the Report.

to which objection is made. *See* Fed. R. Civ. P. 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1). To the extent a party fails to object to parts of the magistrate judge's report, the Court may accept the recommendation so long as there is no clear error on the face of the record. *Macort*, 208 F. App'x at 784. Legal conclusions are reviewed de novo, even in the absence of an objection. *See LeCroy v. McNeil*, 397 F. App'x 554, 556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

Following de novo review of the Report and Defendants' Objections thereto, the Court finds the Report to be well reasoned and correct. For the reasons set forth in the Report [ECF No. 24 pp. 3–14], it is hereby

ORDERED AND ADJUDGED as follows:

1. The Report and Recommendation [ECF No. 24] is **ACCEPTED**.
2. The Motion [ECF No. 18] is **GRANTED IN PART AND DENIED IN PART** as set forth in the Report.
3. Plaintiff may (**but is not required to**) file an Amended Complaint to replead Count 1 in accordance with the Report (and to reassert Counts 2 and 3), but any such Amended Complaint is due on or before **July 22, 2024**, and will constitute Plaintiff's **final opportunity to amend his claims**. Plaintiff is advised that the filing of an Amended Complaint will have the effect of displacing the current Complaint, meaning that Plaintiff shall include in any forthcoming pleading all of his claims in accordance with the Report. If Plaintiff does not file an Amended Pleading by **July 22, 2024**, the case will proceed on Counts 2 and 3 of the current

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Complaint only [ECF No. 9]. Count 4 was previously withdrawn [ECF No. 24 p. 14; ECF No. 21 p. 17].

DONE AND ORDERED in Chambers at Fort Pierce, Florida this 8th day of July 2024.

A handwritten signature in black ink, appearing to read 'Aileen Cannon', written over a horizontal line.

AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record